

# Do you need Emergency Custody and/or Visitation orders? **FAMILY COURT**

## **HOW TO:**

- Ask the Court to make NEW custody and/or visitation orders on an *emergency* basis.
- Ask the Court to CHANGE existing custody and/or visitation orders on an *emergency* basis.

## **WHEN TO USE:**

- A situation has occurred, or may occur, where it is in the best interest of the child that the court make immediate orders.
  - You already have a case open in Family Court (Divorce, Legal Separation, Parentage, Child Support, Custody and Support case). If you want to change orders in a Family Domestic Violence case you must open a new, permanent Family Law case.
- OR**
- You are filing forms now (with the forms here) to open a case in Family Court.
  - You CANNOT use these forms if orders have been made in another court regarding these children (Juvenile Court, or Guardianship in Probate court, for example).

*Self-Service Center, Superior Court, County of Santa Clara, 99 Notre Dame Avenue, San Jose, CA 95113  
408-882-2900 x-2926*

[www.scservice.org](http://www.scservice.org)  
Santa Clara County  
Self-Help website

[www.sccsuperiorcourt.org](http://www.sccsuperiorcourt.org)  
Santa Clara County  
General website

[www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)  
State of California  
Self-Help website

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# INSTRUCTIONS

**A. Fill out the attached blank forms** (type or print neatly in blue or black ink) using the attached sample forms as a guide:

- **Order to Show Cause** (form #FL-300)
- **Temporary Orders** (form #FL-305)
- **Application for Order and Supporting Declaration** (form #FL-310)
- **Proof of Service form** (form #FL-330)

**You can get these forms** from the Court's website at [www.scservice.org](http://www.scservice.org) (then click on "Family" and then "Rules/Forms"), you can buy them from Rose Printing (39 N. First St., San Jose 293-8177) or the forms will be provided to you if you come to the Center for help.

**If you have an existing case**, no matter how old, you may be able to use the same case number and the same case title (the parents will always be Petitioner and Respondent as they were in the first filing). If you are starting a new Family Law case, you are the Petitioner and the other parent is the Respondent.

**B. How to File Your Papers** – Follow these easy steps *in order*, from 1 to 6:

1. **Make 4 to 6 copies** of your completed papers (one for You, two for the other parent, and one extra for the DCSS if they are involved in your case or the other parent's attorney if she/he has one).
2. **Give one *unfiled* copy of your filled out forms to the other parent or their attorney**, if they have one. You can do this in person, by overnight carrier (like FedEx) or by fax. This is to give the other parent advance notice that you are asking the court to make an immediate order.

**\*\*\* If your child is in *immediate* danger you may not have to give advance notice to the other parent. Talk to an attorney about your options\*\*\***

3. **Fill out a Declaration in Support of Ex Parte Application for Orders** form (local form "Attachment M"), following the directions on the back of the form.
4. **Turn your papers into the Court:**  
If you are filing these forms in a Department of Child Support Services (DCSS) child support case (a case with "DA" or "CS" in the number) you will file your papers at Superior Court, Notre Dame Courthouse, 99 Notre Dame Ave., San Jose, CA 95113, 408-882-2900, M-F 8:30 am to 4:00 pm.

If you are filing in a Family Law case (a case with "FL" or "CP" in the number) you will file your papers at Superior Court, Family Division, 170 Park Center Plaza, San Jose, CA 95113, 408-534-5600, M-Fr 8:30 am to 4:00 pm.

**Turn all your forms into the Document Examiner's window** (room 123 if you are filing in Family Court, or at the Document Examiner's window if you are filing in the Notre Dame facility). **They will hold your forms for at least 24 hours** to allow the other parent to respond to what you have filed with the court. Then the Judge will make a temporary order based on all the information and you will be given a court date.

a. **File your papers in the Clerk's Office.** If you are opening a new case or filing for the first time in a case you did not open the filing fee plus a hearing fee is **about \$300**. Hearing fees to change custody or visitation are **about \$100**; hearing fees for new custody and/or visitation orders are about **\$75**.

b. ***If your income is low and you want to ask to not pay the filing fee***, fill out and turn in an **Application for Waiver of Court Fees and Costs** packet (form #982(a)(17) and #982(a)(18)). You can get a packet from the Clerk's office or the Self-Service Center. Sample fee waiver forms are available at the Self-Service Center. Turn your fee waiver forms into the Document Examiner. They will present the forms to the Judge for his or her approval. You will be asked to include at least one paystub.

**5. Pick up your filed papers in the Clerk's Office. Make sure to read the front page of your Order to Show Cause and your Temporary Orders to see what immediate, temporary orders the Judge made.** These orders are in effect immediately and last only until the Court hearing. The Court hearing date is on the front of the Order to Show Cause form.

**6. Serve the papers – You must have filed copies of the papers delivered personally** to the other parent (and their attorney if they have one, and the DCSS if they are a party in the case) at least **5 days** before the court hearing date. Sometimes the number of days is shortened by the Judge.

Papers can be served by an adult (18 years or older) who is not a party to the case or by a professional process server (find them in the telephone book).

**IMPORTANT: You cannot serve the papers yourself**

These are the papers that must be hand-delivered to the other parent –

- A *filed* copy of the **OSC** that has been signed by the Judge
- A *filed* copy of the **Temporary Orders**
- A *filed* copy of your **Application for Order and Supporting Declaration**, including all attachments.
- A *filed* copy of your **Declaration in Support of Ex Parte Application for Orders**

You must also include papers used by the other parent to respond to your OSC:

- A **blank Responsive Declaration** (form #FL-320) form – do not fill it out – it is for the other parent to fill out!

Whoever delivers (“serves”) the papers must complete & sign a **Proof of Personal Service** (form #FL-330) form. The other parent, who receives the papers, does not sign this form. The person who served the other parent gives the Proof of Personal Service to you to file.

**IMPORTANT: Bring the original (filled out and signed) Proof of Personal Service form to the Court with you the day of the hearing or file the original Proof of Personal Service with the County Clerk’s office before the hearing and bring a filed copy of the Proof of Service with you to the hearing.**

### **C. When you come to Court –**

Bring a copy of all the papers in your case and also bring documents which help to prove the information in your Declaration. If you have any witnesses, they should also be present.

### **D. After your Court hearing –**

You must write up the Judge’s orders and file them with the County Clerk. If you are representing yourself you may be referred to the Family Court Clinic where an attorney will write up your orders. The orders must be served on the other parent by mail if they were not present at the hearing or can be mailed to them if they were at the hearing. Orders are written up on a **Findings and Order After Hearing** (form #FL-340) with a **Child Custody and Visitation Order Attachment** (form #FL-341).

If you still have questions, talk to an attorney for legal advice. Referrals to private and low-cost attorneys are available at the Self-Service Center or on the court’s website.

You must know the Court’s local rules. They are available on the court’s website.